

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MONDO SHANE KAI VALDEZ,
Plaintiff,
vs.
SGT. S. FLEENOR, *et al.*,
Defendants.

NO. CV-05-5056-FVS

ORDER CONDITIONALLY WITHDRAWING
ORDER DISMISSING COMPLAINT WITH
PREJUDICE AND GRANTING THIRTY DAY
EXTENSION

By Order filed December 28, 2005, the court dismissed Mr. Valdez's complaint with prejudice for failure to state a claim upon which relief may be granted. Plaintiff had failed to amend his complaint as directed and he had submitted nothing further since September 29, 2005.

Following the entry of judgment, Mr. Valdez submitted a letter on January 10, 2006, asserting he had been denied his legal documents, including this court's address. He apologized for the delay, stating he would have filed a motion for continuance, but had no address.

Because Mr. Valdez is proceeding *pro se* the court will liberally construe the letter filed January 10, 2006, as a Motion for Reconsideration (Ct. Rec. 20). In light of Plaintiff's assertion that he was denied the court's address when he requested it by means of a

1 kite at the Washington State Penitentiary, the court will
2 conditionally withdraw the dismissal order and judgment dated December
3 28, 2005, and grant Mr. Valdez a further thirty (30) days to comply
4 with the directive to either amend his complaint or to voluntarily
5 dismiss.

6 In the letter received on January 10, 2006, Plaintiff appears to
7 object to the court's "assumption that the mail was educational since
8 it was from Wyoming School of Law." In his initial complaint, Mr.
9 Valdez had specifically asserted he "correspond[s] with several legal
10 organizations for educational purposes." He then described a single
11 incident on May 10, 2005, when Defendant Fleenor wrote on an envelope
12 from the University of Wyoming College of Law, Defender Aid Program,
13 "sender does not qualify for the mail to be handled as legal."
14 Plaintiff did not allege in his complaint that the envelope clearly
15 indicated it was from a specific named attorney and/or an "Innocence
16 Project."

17 In any event, although deliberate mishandling of mail may violate
18 a prisoner's first amendment and due process rights, a single mistake
19 or occasional incident of mishandling of mail does not state a claim
20 under section 1983. See Smith v. Maschner, 899 F.2d 940, 944 (10th
21 Cir. 1990); Bach v. Illinois, 504 F.2d 1100, 1102 (7th Cir.) cert.
22 denied sub nom., Bensinger v. Bach, 418 U.S. 910 (1974).
23 Additionally, a plaintiff must be able to show that he was injured by
24 the denial of access to mail. See Morgan v. Montanye, 516 F.2d 1367,
25 1371 (2nd Cir. 1975), reh'g denied, 521 F.2d 693, cert. denied, 424
26 U.S. 973 (1976). Plaintiff has shown no injury.

1 Furthermore, the Supreme Court has held that a prisoner's freedom
2 from censorship under the First Amendment's guarantee of free speech
3 is not the equivalent of freedom from inspection or perusal. *Wolff v.*
4 *McDonnell*, 418 U.S. 539, 576 (1974). Indeed, that Court did not
5 consider whether reading an inmate's mail despite his presence would
6 violate his constitutional rights. In this instance, Plaintiff did
7 not allege any items in his mail from the University of Wyoming were
8 censored and denied to him. He did not allege facts from which the
9 court could infer interference with an established attorney/client
10 relationship in the context of Plaintiff's criminal conviction under
11 the Sixth Amendment.

12 For the reasons set forth above, **IT IS ORDERED** the Motion for
13 Reconsideration (Ct. Rec. 20) is **GRANTED**. The District Court
14 Executive shall **WITHDRAW** the Order Dismissing Complaint With Prejudice
15 (Ct. Rec. 18) and the Judgment (Ct. Rec. 19), entered December 28,
16 2005, on the **CONDITION** that Plaintiff file a Motion to Amend or
17 Voluntarily Dismiss within **THIRTY (30) DAYS** of the date of this Order.
18 PLAINTIFF IS ADVISED IF HE FAILS TO DO SO, THE COURT WILL IMMEDIATELY
19 REINSTATE THE ORDER DISMISSING HIS CASE AND THE CORRESPONDING
20 JUDGMENT.

21 **IT IS SO ORDERED.** The District Court Executive is directed to
22 enter this Order and forward a copy to Plaintiff, along with a form

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1 Motion to Voluntarily Dismiss and a copy of the Order filed September
2 8, 2005 (Ct. Rec. 13).

3 **DATED** this 28th day of March, 2006.

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5 s/Fred Van Sickle
6 Fred Van Sickle
7 United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MONDO SHANE KAI VALDEZ,
Plaintiff,

vs.

SGT. S. FLEENOR, JOHN MOORE,
WASHINGTON STATE
PENITENTIARY, DEPARTMENT OF
CORRECTIONS,
Defendants.

NO. CV-05-5056-FVS

MOTION TO VOLUNTARILY DISMISS
COMPLAINT

Plaintiff MONDO SHANE KAI VALDEZ requests the court grant his Motion to Voluntarily Dismiss the Complaint pursuant to Rule 41(a), Federal Rules of Civil Procedure. Plaintiff is proceeding *pro se*; Defendants have not been served in this action.

DATED this _____ day of _____ 2006.

MONDO SHANE KAI VALDEZ